

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Leanne Fornelli	Team: Squad #16	CCRB Case #: 201510086	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 11/11/2015 11:05 AM, Tuesday, 11/17/2015	Location of Incident: 3125 Park Avenue; 3135 Park Avenue; 44th Precinct stationhouse	Precinct: 44	18 Mo. SOL 5/11/2017	EO SOL 5/11/2017	
Date/Time CV Reported Wed, 11/18/2015 6:34 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 11/27/2015 12:18 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Matthew Manchester	08850	951959	044 PCT
2. POM Alan Avella	21757	934431	044 PCT
3. POM Justin Gelband	14227	952771	044 PCT
4. POM William Garner	20756	951760	044 PCT
5. An officer			044 PCT
6. Officers			044 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Michael Cronin	00348	897264	044 PCT
2. POM Denis Regimbal	12295	951122	044 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Alan Avella	Abuse: On November 11, 2015, at the rear of 3125 Park Avenue in the Bronx, PO Alan Avella stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
B.POM William Garner	Abuse: On November 11, 2015, at the rear of 3125 Park Avenue in the Bronx, PO William Garner stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
C.POM Alan Avella	Discourtesy: On November 11, 2015, at the rear of 3125 Park Avenue in the Bronx, PO Alan Avella spoke discourteously to § 87(2)(b) and § 87(2)(b).	
D.POM Alan Avella	Abuse: On November 11, 2015, at the rear of 3125 Park Avenue in the Bronx, PO Alan Avella frisked § 87(2)(b).	
E.POM Alan Avella	Abuse: On November 11, 2015, at the rear of 3125 Park Avenue in the Bronx, PO Alan Avella searched § 87(2)(b).	
F.POM Alan Avella	Abuse: On November 11, 2015, at the rear of 3125 Park Avenue in the Bronx, PO Alan Avella frisked § 87(2)(b).	

Officer(s)	Allegation	Investigator Recommendation
G.POM Alan Avella	Abuse: On November 11, 2015, at the rear of 3125 Park Avenue in the Bronx, PO Alan Avella searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
§ 87(4-b), § 87(2)(g)		
§ 87(4-b), § 87(2)(g)		
§ 87(4-b), § 87(2)(g)		
§ 87(4-b), § 87(2)(g)		
L.POM Alan Avella	Abuse: On November 17, 2015, at the rear of 3135 Park Avenue in the Bronx, PO Alan Avella stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
M.POM Matthew Manchester	Abuse: On November 17, 2015, at the rear of 3135 Park Avenue in the Bronx, PO Matthew Manchester stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
N.POM Justin Gelband	Abuse: On November 17, 2015, at the rear of 3135 Park Avenue in the Bronx, PO Justin Gelband stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
O.POM Alan Avella	Abuse: On November 17, 2015, at the rear of 3135 Park Avenue in the Bronx, PO Alan Avella frisked § 87(2)(b)	
P.POM Alan Avella	Abuse: On November 17, 2015, at the rear of 3135 Park Avenue in the Bronx, PO Alan Avella searched § 87(2)(b)	
Q. An officer	Abuse: On November 17, 2015 at the rear of 3135 Park Avenue in the Bronx, an officer searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
R.POM Alan Avella	Abuse: On November 11, 2015, at the rear of 3125 Park Avenue in the Bronx, PO Alan Avella searched § 87(2)(b)	
S.POM Alan Avella	Discourtesy: On November 17, 2015, en route to the 44th Precinct stationhouse, PO Alan Avella spoke discourteously to § 87(2)(b)	
T.POM Alan Avella	Off. Language: On November 17, 2015, en route to the 44th Precinct stationhouse, PO Alan Avella spoke offensively to § 87(2)(b)	
U.POM Alan Avella	Abuse: On November 17, 2015, at the 44th Precinct stationhouse, PO Alan Avella strip-searched § 87(2)(b)	
V.POM Matthew Manchester	Abuse: On November 17, 2015, at the 44th Precinct stationhouse, PO Matthew Manchester strip-searched § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
W. An officer	Discourtesy: On November 17, 2015, at the 44th Precinct stationhouse, an officer spoke discourteously to § 87(2)(b)	
X. Officers	Off. Language: On November 17, 2015, at the 44th Precinct stationhouse, officers spoke offensively to § 87(2)(b)	
§ 87(4-b), § 87(2)(g)		
§ 87(4-b), § 87(2)(g)		

Case Summary

On November 18, 2015, § 87(2)(b) filed this complaint via telephone with the Internal Affairs Bureau (IAB). On November 27, 2015, the CCRB received the complaint under IAB Log 15-36426 (Board Review 01). This case addresses the following allegations from two incidents involving the same officer, PO Alan Avella of the 44th Precinct:

On November 11, 2015, at approximately 11:05 a.m., at the rear of 3125 Park Avenue in the Bronx, PO Avella and PO William Garner of the 44th Precinct stopped the car occupied by § 87(2)(b) and § 87(2)(b) (**Allegations A and B**). PO Avella spoke discourteously to § 87(2)(b) and § 87(2)(b) (**Allegation C**), frisked and searched § 87(2)(b) (**Allegations D and E**), frisked § 87(2)(b) (**Allegation F**), and searched the car (**Allegation G**). § 87(2)(b) and § 87(2)(b) were not issued summonses or arrested. § 87(4-b), § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

On November 17, 2015, at approximately 1:50 p.m., at the rear of 3135 Park Avenue in the Bronx, PO Avella, PO Matthew Manchester and PO Justin Gelband of the 44th Precinct stopped the car occupied by § 87(2)(b) and § 87(2)(b) (**Allegations L, M and N**). PO Avella frisked and searched § 87(2)(b) (**Allegations O and P**). An officer searched the car (**Allegation Q**). PO Avella searched § 87(2)(b) (**Allegation R**), and spoke discourteously and offensively to § 87(2)(b) (**Allegations S and T**). At the 44th Precinct stationhouse, PO Avella and PO Manchester strip-searched § 87(2)(b) (**Allegations U and V**). An officer spoke discourteously to § 87(2)(b) (**Allegation W**) and officers spoke offensively to § 87(2)(b) (**Allegation X**). § 87(4-b), § 87(2)(g)

§ 87(2)(b) was issued a desk appearance ticket (Board Review 02) as a result of this incident and the criminal case is open as of this writing. § 87(2)(b) was issued Summons § 87(2)(b) (Board Review 03) for § 87(2)(b)

§ 87(2)(b)

There is no available video footage of these incidents.

This report was submitted four days after the 90-day benchmark because additional time was needed to investigate the two separate incidents involved in this case.

Mediation, Civil and Criminal Histories

- On December 3, 2015, it was confirmed that IAB was conducting a concurrent investigation for the incident on November 17, 2015, thereby rendering the case ineligible for mediation.
- No notice of claim has been filed in regard to these incidents as of January 19, 2016 (Board Review 04).
- § 87(2)(b)
- § 87(2)(b)
- § 87(2)(b)
- § 87(2)(b)
- § 87(2)(b)
- On February 16, 2016, a search of Office of Court Administration records revealed no criminal convictions for § 87(2)(b) in the past ten years.

Civilian and Officer CCRB Histories

- This is the first complaint filed by and involving § 87(2)(b) (Board Review 07), and the first involving § 87(2)(b) (Board Review 08).
- PO Avella has been a member of service for 11 years and has 31 CCRB allegations pleaded against him in 16 other cases. None of these allegations have been substantiated.
 - Three other allegations of discourtesy (word) were pleaded against him in CCRB 201016413 (complainant uncooperative), CCRB 201112453 (complaint withdrawn) and CCRB 201501022 (complainant uncooperative).
 - Three other allegations of a vehicle stop were pleaded against him in CCRB 201016413 (complainant uncooperative), CCRB 201310709 (unsubstantiated) and CCRB 201310824 (unsubstantiated).
 - § 87(4-b), § 87(2)(g)
- PO Garner has been a member of service for four years and has one CCRB allegation pleaded against him in one other case. This allegation was not substantiated.
- PO Manchester has been a member of service for four years and has 11 CCRB allegations pleaded against him in five other cases. In CCRB 201307972, the Board substantiated and recommended charges for an allegation of physical force. In CCRB 201308713, the Board substantiated and recommended command discipline for an allegation of a search (of person). The NYPD dispositions and penalties for these allegations are pending as of this writing. § 87(2)(g)
- PO Gelband has been a member of service for three years and has two CCRB allegations pleaded against him in one other case. These allegations were not substantiated.

Potential Issue

On November 11, 2015, just before the interaction with officers, both § 87(2)(b) and § 87(2)(b) received § 87(2)(b) in the Bronx. § 87(2)(b) and particularly § 87(2)(b) had difficulty recalling the incidents, and it is unknown to what extent, if any, their conditions attributed to this.

Additional Witness

§ 87(2)(b)'s husband, § 87(2)(b) was named as a victim in the first incident on November 11, 2015. Contact attempts to § 87(2)(b) as per agency standards were exhausted. As of this writing, § 87(2)(b) has not contacted the undersigned investigator. § 87(2)(b) has also been unresponsive to requests that she facilitate communication between the undersigned investigator and § 87(2)(b). On February 18, 2016, an online search of the New York City Department of Corrections website revealed that § 87(2)(b) was not incarcerated when contact attempts were being made to him.

Findings and Recommendations

Explanation of Subject Officer Identification

- Both § 87(2)(b) (Board Review 12) and § 87(2)(b) (Board Review 13) alleged that on November 17, 2015, an officer searched their car. § 87(2)(b) alleged this against the third

officer in the car who she could not describe and who was identified via investigation as PO Gelband. § 87(2)(b) alleged this against the officer who was also involved in the incident on November 11, 2015, who was identified via investigation as PO Avella. No interviewed officer acknowledged searching the car or seeing this done. The investigation could not establish the identity of the subject officer of this allegation given the discrepancy between § 87(2)(b)'s and § 87(2)(b)'s testimonies and given that no officer acknowledged searching the car. Thus, Allegation Q has been pleaded against an officer from the 44th Precinct.

- § 87(2)(b) (Board Review 12) alleged that at on November 17, 2015, at the 44th Precinct stationhouse, an officer said, "I wish I was on welfare and collecting \$2,000.00." § 87(2)(b) could only describe this officer as an older white male, with salt and pepper hair and a thin body build. § 87(2)(b) was at the desk at the time, and said there were numerous officers near the desk who she could not describe. After reviewing the roll call and attempting to identify officers that fit the description, the investigation determined that the identity of this subject officer could not be established with the information that § 87(2)(b) was able to provide. Thus, Allegation W was pleaded against an officer.
- § 87(2)(b) (Board Review 12) alleged that on November 17, 2015, at the 44th Precinct stationhouse, male officers called her a "drug addict" and a "meth head." No interviewed officer acknowledged making these statements. As § 87(2)(b) could not recall which officers called her these names and could not offer substantive descriptions of them, Allegation X has been pleaded against officers from the 44th Precinct.

Allegations not Pleaded

- **Abuse of Authority:** § 87(2)(b) (Board Review 13) said that on November 11, 2015, he thought that PO Avella frisked § 87(2)(b) but could not recall for certain. § 87(2)(b) said that on November 17, 2015, § 87(2)(b) was frisked, but he could not recall by whom. As § 87(2)(b) (Board Review 12) did not allege being frisked on either November 11, 2015, or November 17, 2015, these allegations have not been pleaded.
- **Offensive Language:** § 87(2)(b) (Board Review 13) said that on November 17, 2015, before he and § 87(2)(b) were placed in the patrol car, PO Avella called § 87(2)(b) a "meth head." As § 87(2)(b) (Board Review 12) alleged this against PO Avella in the patrol car en route to the 44th Precinct stationhouse (addressed in Allegations S and T) and not before, no additional allegation has been pleaded.

Allegation A – Abuse of Authority: On November 11, 2015, at the rear of 3125 Park Avenue in the Bronx, PO Alan Avella stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

Allegation B – Abuse of Authority: On November 11, 2015, at the rear of 3125 Park Avenue in the Bronx, PO William Garner stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

It is undisputed that on November 11, 2015, PO Avella and PO Garner stopped § 87(2)(b)'s vehicle, which was also occupied by § 87(2)(b) and § 87(2)(b) but the circumstances are in question. § 87(2)(b) (Board Review 12) stated that when she and § 87(2)(b) exited the methadone clinic after receiving medication, § 87(2)(b) was waiting for them in the car directly in front of the black gate in the immediate vicinity. Photograph 1 (Board Review 15) shows the incident location, and the black gate in front of which § 87(2)(b)'s car

was allegedly parked, according to § 87(2)(b) § 87(2)(b) and § 87(2)(b) entered the car, and § 87(2)(b) had driven no more than a half block before being stopped by the officers. § 87(2)(b) (Board Review 13) corroborated this, but did not say where § 87(2)(b) was waiting when he and § 87(2)(b) exited the clinic. § 87(2)(b) could not be reached to provide a statement.

PO Avella (Board Review 10), the driver of the patrol vehicle, stated that he observed § 87(2)(b)'s car facing southbound and stopped in front of the bus stop, the sign for which can be seen in Photograph 1 (Board Review 15). PO Avella did not see anyone enter or exit the car. The car was not near the curb, but closer to the middle of the road, thereby blocking vehicular traffic in a highly congested area. As PO Avella went to pull over the vehicle, it drove forward. PO Avella did not suspect that the driver was trying to escape, but just happened to be pulling away. PO Avella stopped the car for the aforementioned infraction and for no other reason. The car stopped near the black gate, where § 87(2)(b) said in her testimony that § 87(2)(b) had been waiting. Ultimately, PO Avella did not issue § 87(2)(b) a summons, and only warned and admonished him. PO Garner (Board Review 16) fully corroborated PO Avella's testimony with the exception that he stated that he was driving, and not PO Avella.

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation C – Discourtesy: On November 11, 2015, at the rear of 3125 Park Avenue in the Bronx, PO Alan Avella spoke discourteously to § 87(2)(b) and § 87(2)(b)

It is in dispute as to whether or not PO Avella spoke discourteously during the first incident. § 87(2)(b) (Board Review 13) stated that PO Avella approached the car, told § 87(2)(b) to turn it off and immediately began using profanity. When § 87(2)(b) and § 87(2)(b) asked why they were stopped, PO Avella told them to “be quiet and shut the fuck up.” When PO Avella told everyone to exit the car and § 87(2)(b) asked for what, PO Avella said, “Shut the fuck up and just get out of the car.” As PO Avella searched the car (addressed below in Allegation G), § 87(2)(b) turned around to see what he was doing and PO Avella said, “Turn the fuck around.” When everyone was released, PO Avella said, “Get the fuck out of here. I don’t want to see you around here.” § 87(2)(b) (Board Review 12) described PO Avella as rude and obnoxious because he kept saying, “Shut up,” and “Don’t worry about it,” but did not allege that PO Avella cursed during the first incident. § 87(2)(b) could not be reached to provide a statement.

PO Avella (Board Review 10) stated that to his recollection, he did not say, “shut the fuck up,” “get the fuck out of here,” or use any vulgarity whatsoever. PO Garner (Board Review 16) corroborated PO Avella's testimony, and said that PO Avella remained professional throughout the encounter.

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation D – Abuse of Authority: On November 11, 2015, at the rear of 3125 Park Avenue in the Bronx, PO Alan Avella frisked § 87(2)(b)

Allegation E – Abuse of Authority: On November 11, 2015, at the rear of 3125 Park Avenue in the Bronx, PO Alan Avella searched § 87(2)(b)

The frisk and search of § 87(2)(b) by PO Avella is in question. § 87(2)(b) (Board Review 13) said that when PO Avella told him, § 87(2)(b) and § 87(2)(b) to exit the car, they were made to lean up against the bumper of the car with their backs to the car. § 87(2)(b) wore jeans, a tee shirt and a baseball cap. PO Avella patted § 87(2)(b) down from the top to the bottom of his body, including his legs and genital area. PO Avella then reached inside § 87(2)(b)'s front pants pockets. § 87(2)(b) (Board Review 12) did not allege the frisk and search of § 87(2)(b)

While PO Avella (Board Review 10) acknowledged frisking § 87(2)(b) (addressed below in Allegation F), he could not recall if he frisked § 87(2)(b). PO Avella could not recall observing any bulges or anything resembling a weapon on § 87(2)(b)'s person. PO Garner (Board Review 16) could also not recall if PO Avella frisked or searched § 87(2)(b) or any of the car's occupants. PO Garner saw nothing on § 87(2)(b) that raised his suspicions that he was in possession of a weapon, or that resembled a bulge or weapon.

§ 87(2)(g)

Allegation F – Abuse of Authority: On November 11, 2015, at the rear of 3125 Park Avenue in the Bronx, PO Alan Avella frisked § 87(2)(b)

It is undisputed that PO Avella patted down § 87(2)(b). PO Avella (Board Review 10) stated that when § 87(2)(b) stepped out of the car, he noticed a bulge protruding from the front of his waist where a belt buckle would be and which caused his shirt to stick out. PO Avella could not recall the shape of the bulge. PO Avella patted down § 87(2)(b)'s waist and was satisfied with § 87(2)(b)'s explanation that the object was a belt buckle. PO Avella did not touch § 87(2)(b) anywhere else on his body. PO Garner (Board Review 16) said that he saw nothing on § 87(2)(b) that raised his suspicions, or that resembled a bulge or weapon. PO Garner could not recall if PO Avella frisked § 87(2)(b) or any of the car's occupants.

§ 87(2)(g)

Allegation G – Abuse of Authority: On November 11, 2015, at the rear of 3125 Park Avenue in the Bronx, PO Alan Avella searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

It is undisputed that PO Avella searched the car occupied by § 87(2)(b) (driver), § 87(2)(b) (front seat passenger) and § 87(2)(b) (backseat passenger), but the circumstances are in question. § 87(2)(b) (Board Review 13) stated that after PO Avella returned from the patrol car with the group's identifications, PO Avella ordered everyone out of the car. PO Avella searched the car for three of four minutes, and did not find anything. § 87(2)(b) made no mention of any conversation occurring with the officers regarding pills found in the car. § 87(2)(b) said that when everyone was at the back of the car, he informed PO Avella that he and § 87(2)(b) had come from the § 87(2)(b) but made no mention of methadone being found in the car. § 87(2)(b) made no mention of § 87(2)(b) giving PO Avella permission to enter the car. § 87(2)(b) (Board Review 12) largely corroborated § 87(2)(b)'s testimony, except that she made no mention of § 87(2)(b) telling PO Avella that she and § 87(2)(b) had come from the methadone clinic. § 87(2)(b) also made no mention of any pills or methadone being found in the car, or of § 87(2)(b) granting permission for PO Avella to enter the car.

PO Avella (Board Review 10) stated that when § 87(2)(b) was retrieving documentation from his wallet, he noticed a loose, small, white pill and a container of methadone in plain view atop the center console area. The methadone container was a prescription bottle that was approximately an inch or two long, dark in color, opaque, and with a child-proof lid. PO Avella saw that there was a label on the methadone bottle, but he could not see what it said from where he stood at the driver's door. PO Avella asked to whom the methadone and pill belonged. § 87(2)(b) stated that they were hers. § 87(2)(b) stated that she had just come from the methadone clinic. PO Avella asked why the pill was not in a prescription bottle and he could not recall what explanation § 87(2)(b) provided. PO Avella had the occupants step out of the car so that he could gain a better look at the narcotics without giving the occupants any opportunity to ingest or throw them. PO Avella could recall no other reason for doing this. PO Avella told § 87(2)(b) that he was going to retrieve the pill from the car, and § 87(2)(b) said that this was fine. PO Avella leaned into the car to retrieve the methadone to determine if it was prescribed to § 87(2)(b) and to determine if the pill was a scheduled narcotic. PO Avella could recall no other reason for entering the car. PO Avella went to the passenger's side and found two additional pills on the floor of the front passenger's seat, where § 87(2)(b) had been sitting. To PO Avella's recollection, he did not look into any closed compartments. Aside from the methadone and pills, PO Avella found nothing further in the car. The name on the bottle matched the name that § 87(2)(b) provided to PO Avella. With the aid of an application on his cellphone, PO Avella determined that the pills were a scheduled narcotic and determined that § 87(2)(b) had a prescription bottle for the pills. PO Avella warned and admonished § 87(2)(b) for the driving infraction (addressed in Allegation A) and § 87(2)(b) for the loose pills before the group was released.

PO Garner (Board Review 16) corroborated PO Avella's testimony with the following exceptions and additional information: PO Garner said that he heard PO Avella ask, "Whose pills are those?" and did not hear what response was given. PO Garner observed a couple (he could not recall how many except that it was more than one) loose pills on the floor near § 87(2)(b) and a few (he could not recall how many except that it was more than one) atop the center console. PO Garner could not recall what the pills looked like. PO Garner did not know what methadone

looked like or in what container it comes, and therefore could not say if he observed any in the car. PO Garner could not see where PO Avella looked when he went inside the driver's door. PO Garner did not see PO Avella enter the front passenger's door or look in the backseats.

Pursuant to the automobile exception of the warrant requirement, an officer must have probable cause to believe that a vehicle contains evidence of a crime in order to conduct a vehicle search, People v. Smith, 949 N.Y.S.2d 474 (2nd Dept., 2012) (Board Review 35). The presence of loose pills will not justify the search of a car or the occupants without specific reason to believe that the pills were a controlled substance, People v. Carbone, 585 N.Y.S.2d 68 (2nd Dept., 1992) (Board Review 32).

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

§ 87(4-b), § 87(2)(g)

§ 87(4-b), § 87(2)(g)

Allegation L – Abuse of Authority: On November 17, 2015, at the rear of 3135 Park Avenue in the Bronx, PO Alan Avella stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

Allegation M – Abuse of Authority: On November 17, 2015, at the rear of 3135 Park Avenue in the Bronx, PO Matthew Manchester stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

It is undisputed that on November 17, 2015, PO Avella and PO Manchester stopped the car occupied by § 87(2)(b) and § 87(2)(b) but the circumstances are in question. § 87(2)(b) (Board Review 13) said that he was driving the same car from the incident on November 11, 2015, and § 87(2)(b) was in the front seat. § 87(2)(b) stopped at a red light on East 156th Street at 3rd Avenue, and when he proceeded after the light turned green, he was pulled over by PO Avella's and PO Manchester's patrol car. § 87(2)(b) had made no traffic infractions and did not learn why he was pulled over. § 87(2)(b) (Board Review 12) largely corroborated § 87(2)(b)'s testimony.

PO Avella (Board Review 10) stated that at the time of the incident, he and PO Manchester were patrolling the vicinity because of a heavy narcotics condition. The officers were conducting a SNEU set with other members of the Conditions Team. PO Avella drove the car and PO Manchester sat in the front passenger's seat. PO Avella had no recollection of working with PO Gelband. While PO Avella participated in the car stop, he could not recall why the § 87(2)(b)'s car was pulled over or whose decision it was to do this. PO Avella could not recall any communication about the car with other members of the team. PO Avella did not recognize the car, § 87(2)(b) or § 87(2)(b) from the previous incident until he approached the car.

PO Manchester (Board Review 11) stated that at the time of the incident, he, PO Avella and PO Gelband were helping other members of the Conditions Team conduct a SNEU set. The § 87(2)(b)'s car pulled up in the vicinity where the set was being conducted and double parked on Morris Avenue at East 161st Street. One of the other officers from the Conditions Team, who PO Manchester thought was PO Denis Regimbal of the 44th Precinct, brought the officers' attention to the car. PO Manchester and PO Avella observed the car for a few minutes. To PO Manchester's recollection, PO Avella did not say anything to indicate that he recognized the car. PO Manchester, PO Avella and PO Gelband collectively decided to pull over the car and when

they went to do so, the car drove away. The officers followed the car and pulled it over at the rear of 3135 Park Avenue. The officers pulled over the car for the traffic infraction of it being double parked, and for no other reason.

PO Manchester later released § 87(2)(b) from the 44th Precinct stationhouse with Summons § 87(2)(b) (Board Review 03) for § 87(2)(b). The narrative states that § 87(2)(b) was found blocking a lane of traffic by being double parked.

PO Gelband (Board Review 09) said that at the time of the incident, PO Manchester and PO Avella were driving him back to the stationhouse and he was not involved in the decision to stop the car. PO Gelband's memo book places him at court on the morning of the incident (Board Review 14).

PO Regimbal (Board Review 23) stated that he was on top of the roof of 280 East 161st Street and observing the corner of East 161st Street and Morris Avenue as part of the SNEU set. PO Regimbal saw a car illegally parked at a bus stop. PO Regimbal originally said that someone from the Conditions Team (he could not recall who) went over the point-to-point radio and asked him if he saw the car parked there, and PO Gelband stated over the radio that he did see it. PO Regimbal later said there was no transmissions about the car over the point-to-point radio before the car was stopped. PO Regimbal then returned to his original statement that an officer went over the radio and asked PO Regimbal if he saw it.

§ 87(2)(g)

[REDACTED]

To effectuate a car stop, a police officer must be able to articulate credible facts establishing reasonable cause to believe that the vehicle or occupants were involved in a crime, or must have probable cause to believe that a traffic regulation has been violated, People v. Robinson, 97 N.Y.S.2d 341 (2001) (Board Review 33).

§ 87(2)(g)

[REDACTED]

Allegation N – On November 17, 2015, at the rear of 3135 Park Avenue in the Bronx, PO Justin Gelband stopped the vehicle in which § 87(2)(b) wand § 87(2)(b) were occupants.

§ 87(2)(b) (Board Review 12) stated that the third officer in the patrol car, identified via the investigation as PO Gelband, who § 87(2)(b) could not describe, participated in the stop by searching the car. § 87(2)(b) (Board Review 13) mentioned that a third officer was present, but made no allegations against him.

PO Gelband (Board Review 09) stated that he was in the backseat of the patrol car when PO Avella and PO Manchester stopped the car. The officers had just picked up PO Gelband from Bronx Criminal Court, where PO Gelband's memo book confirms he was that morning (Board Review 14), and were taking him to the stationhouse. PO Gelband denied any knowledge of why the car was stopped and denied his participation in the car stop. When § 87(2)(b) and § 87(2)(b) were arrested, there was no room for PO Gelband in the patrol car, so he agreed to drive the car back to the stationhouse. PO Gelband denied searching the car at any time. PO Avella (Board Review 10) could not recall PO Gelband being present. PO Manchester (Board Review 11) said that PO Gelband was present, and all the officers were assisting the daytime Conditions Team with a SNEU set.

§ 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Allegation O – Abuse of Authority: On November 17, 2015, at the rear of 3135 Park Avenue in the Bronx, PO Alan Avella frisked § 87(2)(b)

Allegation P – Abuse of Authority: On November 17, 2015, at the rear of 3135 Park Avenue in the Bronx, PO Alan Avella searched § 87(2)(b)

It is undisputed that PO Avella frisked § 87(2)(b) but the circumstances are in question. § 87(2)(b) (Board Review 13) alleged that after he and § 87(2)(b) exited the car, PO Avella took him to the rear bumper, patted him down and reached into all his pockets. § 87(2)(b) had only his wallet in his back pocket. Near the end of the interaction, PO Avella asked § 87(2)(b) if he had a driver's license, and § 87(2)(b) stated that he did have a commercial driver's license, but it was suspended. PO Manchester said, "Oh, that's great," and handcuffed him. § 87(2)(b) (Board Review 12) did not allege that § 87(2)(b) was frisked.

PO Avella (Board Review 10) said that he inquired about § 87(2)(b)'s driver's license before § 87(2)(b) exited the car, and § 87(2)(b) told him that the license was suspended. PO Avella said that he only patted down § 87(2)(b) after he was under arrest for driving with a suspended license. While PO Manchester (Board Review 11) could not recall if § 87(2)(b) was frisked or searched, he corroborated PO Avella's statement that § 87(2)(b) said that his license was suspended before he exited the car. PO Gelband (Board Review 09) said that while he exited that patrol car at the time of the car stop, he stayed near the patrol car, as he had paperwork in his hands from having appeared at Bronx Criminal Court that morning and was therefore unprepared for the car stop. PO Gelband overheard no conversation between PO Manchester, PO Avella and the civilians. § 87(2)(b) was patted down by either PO Avella or PO Manchester when he exited the car, and PO Gelband did not see either officer reach into § 87(2)(b)'s pockets.

§ 87(2)(g)
[REDACTED]
[REDACTED]

§ 87(2)(g)

Allegation Q – Abuse of Authority: On November 17, 2015 at the rear of 3135 Park Avenue in the Bronx, an officer searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

The search of § 87(2)(b) s and § 87(2)(b) s car is in dispute. § 87(2)(b) (Board Review 12) and § 87(2)(b) (Board Review 13) alleged that an officer searched the car, and neither could say where in the car the officer searched as their backs were to the car. § 87(2)(b) alleged this against PO Gelband and § 87(2)(b) alleged this against PO Avella.

PO Gelband (Board Review 09) said that he drove the civilian car back to the stationhouse, as there was no room for him in the patrol car once the arrests had been made. PO Gelband did not see any contraband in plain view and did not look for any. PO Gelband denied searching the car at any time, and stated that he did not see PO Avella or PO Manchester search the car. PO Avella (Board Review 10) denied searching the car and did not think that any officer did this. PO Manchester (Board Review 11) also denied searching the car or seeing PO Avella or PO Gelband enter the car in any way.

§ 87(2)(g)

Allegation R – Abuse of Authority: On November 11, 2015, at the rear of 3125 Park Avenue in the Bronx, PO Alan Avella searched § 87(2)(b)

Although PO Avella (Board Review 10) could not recall searching § 87(2)(b) s purse, § 87(2)(b) (Board Review 12) said that when he asked to do so while PO Gelband was searching the car, she provided permission by saying, “By all means, go ahead.” § 87(2)(b) said that she had been experiencing a bad toothache and had been taking over-the-counter pain medication for this. § 87(2)(b) had no knowledge of any pills being in her purse, but PO Avella showed her a pill that he found. § 87(2)(b) did not see PO Avella retrieve the pill from the purse. § 87(2)(b) told PO Avella that it had to be a Motrin or something similar, and PO Avella insisted that it was a narcotic. The pill turned out to be Percocet, and § 87(2)(b) had no knowledge of Percocet being in her purse. § 87(2)(b) (Board Review 13) also alleged that PO Avella searched § 87(2)(b) s purse, but did not say that § 87(2)(b) provided consent for this.

PO Manchester (Board Review 11) said that when § 87(2)(b) stated that his driver’s license was suspended, § 87(2)(b) said that she had a driver’s license and could drive. PO Manchester requested to see her driver’s license. When § 87(2)(b) opened her purse, he observed one large, white pill of a nondescript texture about a ½-inch in length with numbers engraved on it. PO Manchester recognized the pill as a controlled substance, and § 87(2)(b) was ultimately arrested for this. The pill was eventually recovered from the purse, but PO Manchester could not recall how this was done.

Arrest Evidence Voucher § 87(2)(b) (Board Review 24) completed by PO Manchester on November 17, 2015, lists a Termadol tablet as the controlled substance found on § 87(2)(b)

A police officer needs founded suspicion of criminality to request consent to search, *People v. Hollman*, 79 N.Y.2d 181 (1992) (Board Review 36).

§ 87(2)(g)

Allegation S – Discourtesy: On November 17, 2015, en route to the 44th Precinct stationhouse, PO Alan Avella spoke discourteously to § 87(2)(b)

Allegation T – Offensive Language: On November 17, 2015, en route to the 44th Precinct stationhouse, PO Alan Avella spoke offensively to § 87(2)(b)

§ 87(2)(b) and § 87(2)(b) both alleged that PO Avella spoke discourteously and offensively to § 87(2)(b) § 87(2)(g)

§ 87(2)(b) (Board Review 12) said that in the patrol car, she and PO Avella argued back and forth about the controlled substance found in her purse. PO Avella yelled at § 87(2)(b) and she yelled back at him. PO Avella said, “Oh, shut the fuck up. Look who I’m talking to—a fucking meth head.” § 87(2)(b) said, “Look who I’m talking to – a patroller.” PO Avella said, “Fuck this shit, man. We’re going to fucking put you in the fucking system.”

§ 87(2)(b) (Board Review 13) said that before the car was searched, § 87(2)(b) and PO Avella argued about why the officers pulled them over. § 87(2)(b) told PO Avella that she felt harassed because the officers had stopped her and § 87(2)(b) just days prior. PO Avella said, “I’m not going to argue with a meth head.” In the car, § 87(2)(b) said that PO Avella asked § 87(2)(b) about the amount of money she had with her, and asked if she worked. § 87(2)(b) said that she was on public assistance. PO Avella responded, “Oh, yeah, I wish I was on the fucking same thing.” PO Avella and § 87(2)(b) argued whether the money she had was drug money. PO Avella said, “I’m not going to argue with a fucking meth head.”

PO Avella (Board Review 10) denied using any vulgarity with § 87(2)(b) at any point during the incident, and denied calling her a “meth head.” PO Manchester (Board Review 11) and PO Gelband (Board Review 09) also denied hearing PO Avella make these statements.

§ 87(2)(g)

§ 87(2)(g)

Allegation U – Abuse of Authority: On November 17, 2015, at the 44th Precinct stationhouse, PO Alan Avella strip-searched § 87(2)(b)

Allegation V – Abuse of Authority: On November 17, 2015, at the 44th Precinct stationhouse, PO Matthew Manchester strip-searched § 87(2)(b)

The strip-search of § 87(2)(b) is in dispute. § 87(2)(b) (Board Review 13) said that when he arrived to the stationhouse, PO Avella and PO Manchester took him to the last cell and had him take off his sneakers, socks, jacket and belt. § 87(2)(b) then had to pull his pants down, shake his boxers and bring down his boxers so that his genitals and buttocks were exposed. § 87(2)(b) was allowed to keep on his tee shirt.

PO Avella (Board Review 10) denied strip-searching § 87(2)(b). PO Avella said that he was probably involved in searching him, which entailed looking inside socks and shoes for contraband, but he could not recall for certain. PO Avella could not recall if § 87(2)(b)'s undergarments were ever exposed, but he did not think so. PO Avella could not recall § 87(2)(b) being asked to remove his pants, and did not hear any officer ask him to remove his clothing. PO Avella heard no supervisor instruct that a strip-search be conducted on § 87(2)(b) and heard no officer recommend this. PO Manchester (Board Review 11) also denied strip-searching § 87(2)(b) or recommending that a strip-search be conducted. PO Manchester could not recall § 87(2)(b) being taken to a private place. PO Manchester did not see § 87(2)(b) exposed in any way, and § 87(2)(b) did not complain of this. PO Gelband (Board Review 09) did not know of § 87(2)(b) being strip-searched and did not hear any officer recommend that this be done.

The command log entry for § 87(2)(b) (Board Review 27) had no notation of a strip-search being conducted. The strip-search did not appear in the memo books of PO Manchester (Board Review 34), PO Avella (Board Review 19) or PO Gelband (Board Review 14).

§ 87(2)(g)

Allegation W – Discourtesy: On November 17, 2015, at the 44th Precinct stationhouse, an officer spoke discourteously to § 87(2)(b)

§ 87(2)(b) (Board Review 12) alleged that at the 44th Precinct stationhouse, when she was at the desk, an officer, in reference to the amount of money she had with her, said, “I wish I was on welfare and collecting \$2,000.00.” § 87(2)(b) (Board Review 13) did not allege this. No interviewed officer acknowledged making this statement or overhearing another officer say this.

§ 87(2)(g)

Allegation X – Offensive Language: On November 17, 2015, at the 44th Precinct stationhouse, officers spoke offensively to § 87(2)(b)

§ 87(2)(b) (Board Review 12) said that after an officer alleged that a crack pipe was found where she had been sitting in a vehicle that she had occupied (it was unclear whether this was her vehicle or the patrol car), officers in the stationhouse called her names such as “drug addict” and “meth head.” § 87(2)(b) could not recall who these officers were. § 87(2)(b) (Board Review 13) said that from his cell, he heard an officer say they found the crack pipe, but did not allege that officers called § 87(2)(b) a “drug addict” or “meth head.” No interviewed officer acknowledged calling § 87(2)(b) these names or hearing other officers do this.

§ 87(2)(g)

Squad: 16

Investigator:	_____	<u>L. Fornelli</u>	_____
	Signature	Print	Date
Pod Leader:	_____	_____	_____
	Title/Signature	Print	Date
Attorney:	_____	_____	_____
	Title/Signature	Print	Date